EDITOR'S NOTE

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87-773

No. ———

In The
Supreme Court of the United States
October Term, 1987

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ALLEN, et al.,

Petitioners,

vs.

BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITIES AND COLLEGES, et al.,

Respondents.

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On Petition for Writ of Certiorari to the California Supreme Court

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the California court err in applying *Wilson v. Garcia*, 471 U.S. 261 (1985), retroactively so as to shorten the applicable California limitations period and bar Petitioners' civil rights cause of action (42 U.S.C. § 1983) which was timely when filed?

2. Did the California court err in holding that a campus at a public university is not a public forum?

3. Did the California court err in overlooking Petitioners' First Amendment right to receive information which California State University at Long Beach (CSLB) deliberately and systematically excluded from its Women's Studies program.

4. Did the California court in effect confer upon its state university contrary to the constitution a First Amendment right to advocate a political or partisan cause?

5. Did the California court err in concluding that CSLB's conduct did not constitute sexual harassment in violation of the Fourteenth Amendment?

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The Order of the California Supreme Court denying petitioners' petition for review was filed July 22, 1987. On April 30, 1987 the California Court of Appeal for the Second Appellate District affirmed the Order of the Superior Court of Los Angeles County upholding the Attorney General's demurrer to petitioners' first amended complaint.

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JURISDICTION

The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1).

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STATEMENT OF THE CASE

Petitioner Rose Burgos took a CSLB Women's Studies course "How To Be An Assertive Woman" in order to help enter the world of business. Instead, she was indoctrinated into the claimed benefits of masturbation and lesbianism by films and touching exercises.

Petitioner Lani Currameng took a CSLB psychology course entitled "Therapists and Experiment Effects." Instead of dealing with therapist problems, the course and its texts were an apologia for lesbianism and an effort to denigrate the traditional family. The instructor told the students that she was going to reeducate them into being homosexual.

Petitioner Andrea Valle took a CSLB assertiveness program in order to learn how to approach people. The instructor showed offensive films depiciting masturbation and lesbian love making and assigned sexual homework.

Petitioner Laurie Stewart took a CSLB Women's Studies course "Women and Their Bodies." One half of the course was about sex, with the instructor showing films of her own genitalia or group and lesbian sex and masturbation. The instructor assigned contact with pornography and required the students to keep a sexually explicit journal. The instructor said that she was a lesbian and indicated that the petitioners' resistance to the course material and assignments was abnormal.

Petitioner Kelly Fortner took an assertive women's class as part of the program. The class advocated lesbianism and was biased against men. Anyone who was opposed to lesbianism was intimidated by the instructor in front of other students.

These students in the Women's Studies program at CSLB and several California taxpayers who challenged the entire CSLB Women's Studies program as politically biased in favor of the political movements of feminism and lesbianism. The CSLB Women's Studies program advocated only one political viewpoint and excluded all others. Because Women's Studies program was merely a facade for political indoctrination and recruitment at a state university, petitioners charged that CSBL was not entirely independent and free of all political influence as required by California Ed. Code § 66607 and the First and Fourteenth Amendments of the Federal Constitution.

"The California State University shall be entirely independent of all political and sectarian influence and kept free therefrom in the appointment of its trustees and in the administration of its affairs...."

Ed. Code § 66607

The State, through CSLB's Women's Studies faculty urged students and the public alike to support the feminist political agenda. The State established in its CSLB classrooms a controlled public forum by excluding voices it wished not to hear, and otherwise deprived the student petitioners of their right to know information contrary to the State's views. Finally, the State marshalled its resources in favor of a curriculum whose entire subject matter, was unjustifiably tied to gender alone.

Although CSLB never challenged the constitutionality of § 66607, the California Court of Appeal interpreted petitioners' efforts to enforce the statute as an attempt to censor course content and to suppress academic freedom (Slip Op. pp. 16-17, 25). The court also opined without proof that the University was free of political influence because other courses balanced out the alleged Women's Studies' bias. (Slip Op. pp. 21,25).

The Court also inexplicitly thought that enforcement of § 66607 would contract the spectrum of available knowledge (Slip Op. p. 17); petitioners contend that the purpose of § 66607 was to protect students and the public from the State's contracting the spectrum of available knowledge by politicizing its CSLB courses, particularly in the dubious sciences.

Petitioner taxpayers charged the State with spending its resources in contravention of both California statutes

and the federal constitution so as to establish in the only course devoted solely to women's studies an orthodoxy of the issues. Petitioner students charged the State with deliberately excluding useful and available information on women's issues so as to recruit them to its ideological and sexual orientations.

Petitioners contend that the CSLB Women's Studies program conducted as alleged cannot escape the reach of the First and Fourteenth Amendments merely by hiding behind university walls. Accordingly, petitioners respectfully request this court to grant a writ of certiorari for review.

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ARGUMENT

I

THE CALIFORNIA COURT ERRONEOUSLY APPLIED WILSON V. GARCIA RETROACTIVELY SO AS TO SHORTEN THE LIMITATIONS PERIOD AGAINST PETITIONERS' CLAIM WHICH WAS TIMELY WHEN FILED.

The California court sustained CBLB's demurrer to petitioners' civil rights count (Fourth Cause of Action) on the ground that the action was barred by the *three* year statute of limitations applicable when plaintiffs filed their complaint on January 4th, 1985. (CT 89) *Williams v. Horvath*, 16 C. 3d 834, 839 (1976). Subsequently on April 17, 1985, *Wilson v. Garcia*, 471 U.S. 261 (1985) directed as a matter of federal policy that the pertinent state's personal injury limitations period should apply to a § 1983 action.

Without regarding the students' claims that the offending practices were extant within three years of the filing of the complaint and continued unchanged and without acknowledging petitioners' claim that an attempt to file an action, such as in intervention, begins the action *Weiner v. Superior Court*, 58 CA. 3d 525, 530, 531 (1976). The California court *retroactively* applied the one year statute mandated by *Garcia v. Wilson* to bar an action as untimely that was timely when filed. (Slip Op. p. 13) The California court's retroactive application of *Garcia v. Wilson* to an action timely when filed was clear error. *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986).

> On April 17, 1985 the Supreme Court handed down its decision in *Wilson v. Garcia*, 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). In *Wilson*, the Supreme Court held that all § 1983 claims are to be governed by state statutes of limitations for personal injury actions. In California, *Wilson* mandates that the appropriate statute of limitations for § 1983 claims is the one year statute provided in California Code of Civil Procedure § 340.
>
> The Ninth Circuit has addressed the question of whether *Wilson* should be granted retroactive application on two occasions. In *Rivera v. Green*, 775 F.2d 1381 (9th Cir. 1985) the Ninth Circuit applied *Wilson* retroactively to a § 1983 action brought in Arizona where such retroactive application served to lengthen the statute of limitations period. However, in *Gibson v. United States*, 781 F.2d 1334 (9th Cir. 1985), the Ninth Circuit refused to apply *Wilson* retroactively to shorten the statute of limitations governing a § 1983 action filed in California. In both *Rivera* and *Gibson*, the Ninth Circuit addressed the issue of retroactive application with respect to actions that were filed prior to *Wilson*. Here, however, plaintiffs did

not file their claims against Vargas until April 18, 1986, more than a year after the *Wilson* decision.

Cabrales v. County of Los Angeles, 644 F.Supp. 1352, 1354 (C.D. Cal. 1986)

The trial court did not sustain defendants' demurrer on authority of the one year statute so that the appeal court's basis for affirmance of the limitations bar was clearly misplaced. Petitioners respectfully submit that the civil rights count is not barred by either the one year or the three year statute of limitations.

II

THE CLASSROOM AT CSLB CONSTITUTES A PUBLIC FORUM, FROM WHICH THE STATE HAS SYSTEMATICALY AND UNLAWFULLY EXCLUDED TRADITIONAL MORAL AND ETHICAL VIEWPOINTS.

The court below erroneously stated that a public university is not a public forum, citing *Widmar v. Vincent*, 454 U.S. 263, 267-268 (1981) (Slip Op. p. 23). *Widmar* held just the opposite:

> "Having created a forum generally open to student groups, the University seeks to enforce a content-based exclusion of religious speech." (454 U.S. at p. 277)

Nor does footnote 5, relied upon by the appeal court, support its position:

> This Court has recognized that the campus of a public university, at least for its students, possesses many of the characteristics of a public forum. See generally *Police Dept. of Chicago v. Mosley*, 408 U.S. 92 (1972), *Cox v. Louisiana*, 379 U.S. 536 (1965). "The college

> classroom with its surrounding environs is peculiarly 'the marketplace of ideas.'" *Healy v. James*, 408 U.S. 169, 180 (1972). Moreover, the capacity of a group or individual "to participate in the intellectual give and take of campus debate . . . [would be] limited by denial of access to the customary media for communicating with the administration, faculty members, and other students." Id., at 181-182. We therefore have held that students enjoy First Amendment rights of speech and association on the campus and that the "denial to particular groups of use of campus facilities for meetings and other appropriate purposes" must be subjected to the level of scrutiny appropriate to any form of prior restraint. Id., at 181, 184.
>
> At the same time, however, our cases have recognized that First Amendment rights must be analyzed "in light of the special characteristics of the school environment." *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 506 (1969). We continue to adhere to that view. A university differs in significant respects from public forums such as streets or parks or even municipal theaters. A university's mission is education, and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities. We have not held, for example, that a campus must make all of its facilities equally available to students and non-students alike, or that a university must grant free access to all of its grounds or buildings.

Although a public university differs from a public park in that it can restrict access to its facilities and govern its students, First Amendment rights extend to the campus so as to protect "the college classroom with its surrounding environs" . . . as "the marketplace of ideas." 454 U.S. at p. 267. "[A]t least for its students" . . . "the campus of a public university possesses many of the characteristics of a public forum." 454 U.S. at p. 267. Peti-

tioners charged CSLB and its feminist faculty with systematically excluding the other side of the feminist dialectic from its Women's Studies program. Such allegations made out a clear cause of action under the First Amendment.

The University may not grant the exclusive use of its Women's Studies forum to feminists and at the same time exclude from that forum traditional view that women have a peculiar and exalted role in society from which not only do they not seek liberation but to which they should be instead encouraged to return.

> "[U]nder the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities. There is an equality of status in the field of ideas, and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say." *Police Department of Chicago v. Mosley*, 408 U.S. 92, 96 (1972)

The CSLB faculty is the censor. It has removed all books and references defending and advocating women's traditional role from its Women's Studies program: the very place a student would expect to find an objective and scholarly treatment of all sides of "women's" issues. *Board of Education v. Pico*, 457 U.S. 853 (1981), *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943); *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969).

Instead, a state orthodoxy of radical feminism is all that emanates from its Women's Studies program. It is no answer to say that the student may ferret out contrary views elsewhere on campus inasmuch as the curriculum expressly purporting to address such issues does not do so accurately, completely or honestly.

III

IN RULING THAT PETITIONERS HAD NOT STATED A CAUSE OF ACTION UNDER THE FIRST AMENDMENT, THE CALIFORNIA COURT FAILED TO CONSIDER THE STUDENTS' FIRST AMENDMENT RIGHTS TO RECEIVE INFORMATION DELIBERATELY AND SYSTEMATICALLY EXCLUDED BY THE WOMEN'S STUDIES PROGRAM.

While acknowledging that freedom of speech embraces the right to receive information, (Slip Op. p. 18) the California court construed § 66607 to mandate a constitutionally infirm absence of any political discussion on campus. To the contrary, the statute can only be valid if it complies with petitioners' interpretation; that the university's speech must be content neutral so that the students' First Amendment right to receive information is not impaired. It is the bias emanating from CSLB Women's Studies program that prevents a student in the program from receiving anything but feminist propaganda.

Petitioners clearly alleged in their second and seventh causes of action that CSLB excluded from its students information they had a First Amendment right to receive:

> Plaintiffs, on the other hand, contend that the University is accountable to taxpayers for advocating to captive auditors in a public forum and at public expense the controversial political and social doctrines

> of feminism and lesbianism and *excluding from that forum traditional and empirical thought condemning the doctrines advocated.* (paragraph 53, C.T. 115, emphasis added)
>
> *. . . plaintiffs contend . . . that the University has presented only one side of controversial, political and moral issues and has obtained control over the quality and range of debate on certain public issues in a closed forum* of auditors, which should be left instead to open and public debate in the political arena; has made the ability of those opposed to the views of the University to depend on the sufficiency of their financial resources to match the massive momentum, official imprimatur, large expenditures and captive forum employed by the University and has *restricted the speech of those plaintiffs and others opposed to the radical political, social and sexual philosophy espoused by the University so as to enhance the relative voice of the University and those whose views it supports,* all of which violates the First and Fourteenth Amendments of the United States Constitution and Article I §§ 1, 2, 4, and 7 of the California Constitution. (First amended complaint paragraph 70, emphasis added)

In *Board of Education v. Pico,* 457 U.S. 853, 866-868 (1982) this court relied upon the right of students to receive information and ideas:

> . . . Our precedents have focused "not only on the role of the First Amendment in fostering individual self-expression but also on its role in affording the public access to discussion, debate, and the dissemination of information and ideas." *First National Bank of Boston v. Bellotti,* 435 U.S. 765, 783 (1978). And we have recognized that "the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge." *Griswold v. Connecticut,* 381 U.S. 479, 482 (1965). In keep-

ing with this principle, we have held that in a variety of contexts "the Constitution protects the right to receive information and ideas." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); see *Kleindienst v. Mandel*, 408 U.S. 753, 762-763 (1972) (citing cases). This right is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution, in two senses. First, the right to receive ideas follows ineluctably from the *sender's* First Amendment right to send them: "The right of freedom of speech and press . . . embraces the right to distribute literature, and necessarily protects the right to receive it." *Martin v. Struthers*, 319 U.S. 141, 143 (1943) (citation omitted). "The dissemination of ideas can accomplish nothing if otherwise willing addresses are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers." *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (BRENNAN, J., concurring).

More importantly, the right to receive ideas is a necessary predicate to the *recipient's* meaningful exercise of his own rights of speech, press, and political freedom. Madison admonished us that:

> A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with with [sic] the power which knowledge gives. 9 Writings of James Madison 103 (G. Hunt, ed. 1910).

As we recognized in *Tinker*, students too are beneficiaries of this principle:

> In our system, students may not be regarded as closed circuit recipients of only that which the state chooses to communicate . . . [S]chool officials cannot suppress the 'expressions of feeling with which they do not wish to contend' 393 U.S.,

> at 511. (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (CA. 5 1966)).
>
> In sum, just as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members. 457 U.S. at pp. 866-868.

The precedents for students' rights to receive information predated *Pico* by almost sixty years. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the court recognized a student's right to receive information as grounded in the Fourteenth Amendment:

> The problem for our determination is whether the statute as construed and applied unreasonably infringes the liberty guaranteed to the plaintiff in error by the Fourteenth Amendment. "No State shall . . . deprive any person of life, liberty or property without due process of law."
>
> While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any use of the common occupations of life, *to acquire useful knowledge*, to marry, establish a home, and bring up children, to worship God according to dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

Meyer dealt with the exclusion of certain subjects from the curriculum. Later in the opinion, the court again referred to students' right to receive information:

> Evidently the legislature has attempted materially to interfere with the calling of modern language teachers with *the opportunities of pupils to acquire knowledge*, and with the power of parents to control the education of their own. 262 U.S. at p. 401 (emphasis added).

In *Epperson v. Arkansas*, 393 U.S. 97, 104, 105 (1968) a case involving the exclusion of a theory from the curriculum, this court said:

> Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. Our courts, however, have not failed to apply the First Amendment's mandate in our educational system where essential to safeguard the fundamental values of *freedom of* speech and *inquiry* and of belief. By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. On the other hand, "[t]he vigilant protection of constitution freedoms is nowhere more vital than in the community of American schools," *Shelton v. Tucker*, 364 U.S. 479, 487 (1960) (emphasis added)

In *Kleindienst v. Mandel*, 408 U.S. 753 (1972), the court said that students' right to receive information was "vital":

> In a variety of contexts this Court has referred to a First Amendment right to "receive information and ideas." . . . This Court has recognized that this right is "nowhere more vital" than in our schools and universities. *Shelton v. Tucker*, 364 U.S. 479, 487 (1960); *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (plurality opinion); *Keyishian v. Board of*

Regents, 385 U.S. 589, 603 (1967). See *Epperson v. Arkansas*, 393 U.S. 97 (1968).

Thus, this court has found the right to receive information protected by the First Amendment and by the Due Process Clause of the Fourteenth Amendment to be included in the liberties protected by the Fourteenth Amendment. Whether such right is called the right "to acquire useful knowledge," "to acquire knowledge," or "to receive information and ideas," or the "freedom of . . . inquiry" or "the freedom . . . of students to learn," or, as sometimes referred to, "the right to hear" or "the right to know," this right of students in public education has been recognized as a constitutionally-protected "vital" right.

IV

THE CHALLENGED CONDUCT UNLAWFULLY COMPELS TAXPAYERS TO SUPPORT AN IDEOLOGY THEY OPPOSE.

The First Amendment is to protect the speech of citizens from government encroachment. As part of that protection, taxpayers are not required to support government propaganda.

Justice Black said:

> "I can think of few plainer more direct abridgments of the freedoms of the First Amendment than to compel persons to support candidates, parties, idealogies or causes that they are against." *Lathrop v. Donahue*, 367 U.S. 820, 873 (1961) (Black, J. dissenting)

> "The commonwealth has an interest in assuring that a dissenting minority of taxpayers is not compelled to finance the expression of an election issue of views with which they disagree." 87 C.A.3d at p. 771 (quot-

> ing *Anderson v. City of Boston*, 380 N.E. 2d 628, 639 (1978)

As before noted, the weighty insular "teachings" by the state addressed to an immature captive audience are far more dangerous than a public debate about political or election issues.

Justice Black's dissenting plurality view in *Lathrop* was adopted by the U.S. Supreme Court in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) where the issues adroitly parried in *Ass'n of Machinists v. Street*, 367 U.S. 740 (1961) and *Lathrop v. Donahue, supra*, were finally confronted. In *Abood*, the court held that dissenting union members could not be compelled to finance union political expenditures on behalf of candidates they opposed:

> "The fact that the appellants are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their constitutional rights. For at the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State. And the freedom of belief is no incidental or secondary aspect of the First Amendment's protection:
>
> > 'If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.'
>
> • • •
>
> Jefferson agreed that 'to compel a man to furnish contributions of money for the propogation of opin-

> ions which he disbelieves, is sinful and tyrannical.' "
> 431 U.S. at p. 235

The analogy between a union's forced contribution from its members to promote political issues and the state's exaction by taxes to promote feminism in the schools is apparent. This court in *Miller, supra,* has already approved the principle stated in *Anderson v. City of Boston, supra,* protecting minority taxpayers from supporting government opinions which they oppose. The Massachusetts Court also noted that:

> "Government domination of the expression of ideas is repugnant to our system of constitutional government."
>
> 380 N.E.2d at p. 637, n.14

Ironically, this court had struck down a Massachusetts law prohibiting corporate expenditures to influence a referendum vote, as violating the First Amendment. *First National Bank v. Bellotti,* 435 U.S. 765 (1978) Boston appealed the *Anderson* decision to this court, claiming a municipal First Amendment right like a corporate First Amendment right. Although the Court initially stayed the Massachusetts injunction, the appeal was later dismissed for want of a substantial federal question, leaving the Massachusetts judgment intact. *City of Boston v. Anderson,* 439 U.S. 1060 (1979) The dismissal must be interpreted as indicating no inclination to give the state a First Amendment right to protected speech. Indeed, to do so would undermine the very principle that emerged in *Abood*: that political or ideological speech is an infringement of the First Amendment when supported by exacted financial contributions.

Similarly, in *Wooley v. Maynard*, 430 U.S. 705 (1977), the Court upheld an injunction preventing the prosecution of Jehovah Witnesses for obscuring the message "Live Free or Die" on their New Hampshire automobile license plates:

> "The State's second claim interest is not ideologically neutral. The State is seeking to communicate to others an official view as to proper 'appreciation of history, state pride, [and] individualism.' Of course, the State may legitimately pursue such interest in any number of ways. However, where the State's interest is to disseminate an ideology, no matter how acceptable to some, such interest cannot outweigh an individual's First Amendment right to avoid becoming the courier for such message." 430 U.S. at p. 717

The students at CSLB are not mere inanimate couriers of the state's message, but intended to become its literal embodiment; a faithful following, later to enter the polling place and the government itself, thus consummating the social change to which the Women's Studies program and its faculty are devoted.

The evil in allowing state funds to propogate a particular ideology or viewpoint on matters of public importance was well stated in *Mountain States Legal Foundation v. Denver School Dist.*, 459 F.Supp. 357 (D.Colo. 1978), where the court enjoined a school district from implementing a resolution authorizing an expenditure of district funds to defeat a proposed constitutional amendment:

> ". . . use of the power of publicly owned resources to propagandize against a proposal made and supported by a significant number of those who were taxed to

pay for such resources is an abridgment of those fundamental freedoms." 459 F.Supp. at pp. 360-361.

No less should the taxpayers of California be compelled to propagandize to students at CSLB the peculiar ideology of the University and its feminist faculty.

By allowing feminism not just to flourish but to capture an entire department of CSLB, defendants have implicitly adopted, endorsed and advanced as state policy the content of the Women's Studies program. Plaintiffs thus alleged that a state orthodoxy had invaded the classroom at CSLB in all 18 courses of one entire department.

In California, government universities must be free of political influence to avoid becoming advocates of any incumbent doctrine. A feminist orthodoxy ensconced beyond attack in a government university is a condition obviously antithetical to academic freedom and a clear violation of student rights protected by § 66607 and the First and Fourteenth Amendments.

V

THE CALIFORNIA COURT ERRED IN HOLDING THAT PLAINTIFFS FAILED TO STATE A CAUSE OF ACTION FOR SEX DISCRIMINATION.

Preference of women over men in the application of public resources is just as invalid as excluding women from their benefits. *Weinberger v. Wiesenfield*, 420 U.S. 636 (1975); *Arp v. Workers' Comp. Appeals Bd.*, 19 C. 3d 395 (1977)

Because of the facially suspect preference of the Women's Studies program, Respondents have the burden to establish a compelling state interest to justify their ad-

ministrative and curriculum preference. For example, in *Craig v. Boren*, 429 U.S. 190 (1976), this court stated that classifications by gender are constitutional only if they are substantially related to the achievement of important governmental objectives. Inasmuch as a preference based on the proposition that all women ought to stay in the home while men serve as breadwinners will be struck down, *Stanton v. Stanton*, 421 U.S. 7, 14-15 (1975), the university's propaganda for the reverse proposition should also be proscribed. Defendants have not shown any compelling state interest justifying an entire curriculum devoted to women, and especially not to feminism.

Although plaintiffs alleged no discriminatory exclusion of men from the faculty or the courses[1], the effect is to deprive students at CSLB, be they women or men, of information determined by CSLB not to be supportive of CSLB's political goal of advancing women's rights. As alleged, the Women's Studies program is political, advocatory and affirmative toward women alone. It has no agenda to advance the rights of men and women together or of men alone, but solely women, and feminist women at that.

Racial motivation is actionable under the Civil Rights Act and the Fourteenth Amendment where the effect is to preclude school students from receiving information about the Civil Rights movement. *Loewen v. Turnipseed*,

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[1]The court freely admits that the program is "geared solely to addressing women's needs." (Slip Op. p. 25) CSLB lays no foundation for its being remedial, which is not an adequate ground for preferential treatment in any event. *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982).

488 F. Supp. 1138, 1154 (N.D. Miss. 1980). By analogy, the same liability would apply with regard to the exclusion of texts motivated by sex discrimination, given the requisite factors pointing to invidious discrimination. *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 266 (1976).

Devoting a whole university program to the needs of feminist women is just as discriminatory as one devoted solely to the needs of men. CSLB cannot divert a segment of its public resources to advancing a political cause based exclusively upon gender, *Weinberger v. Wiesenfield*, 420 U.S. 636 (1975).

VI

PETITIONERS ARE ENTITLED TO THEIR ATTORNEYS FEES.

Petitioner taxpayers are entitled to recover attorneys fees under CCP § 1021.5 and petitioner students are entitled to recover attorneys fees under 42 U.S.C. § 1988, which applies even though the civil rights vehicle was used to challenge violations of the federal constitution in a state court action. *Maine v. Thiboutot*, 448 U.S. 1, 11 (1980).

CONCLUSION

It is clear that petitioners stated numerous causes of action against respondents arising out of respondents' violation of statutory and constitutional constraints against the advocacy and promotion of a sexist political cause by an entire department at a state university. Grave

constitutional questions should not be decided upon a demurrer to a complaint:

> "We are in accord with the view that it is inexpedient to determine grave constitutional questions upon a demurrer to a complaint, or upon an equivalent motion, if there is a reasonable likelihood that the production of evidence will make the answer to the questions clearer."

Borden's Farm Products Co. v. Baldwin, 293 U.S. 194 at 213, 55 S.Ct. 187, 79 L.Ed. 291 (1934)

Important and difficult constitutional issues should only be decided upon a full record and after adequate hearing. *Polk Co. v. Glover*, 305 U.S. 5 (1938); *Villa v. Van Schaick*, 299 U.S. 152 (1936). See also *Honeyman v. Hannan*, 300 U.S. 14, 25 (1937); *Patterson v. Alabama*, 294 U.S. 600, 607 (1935); *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947); *DeBacker v. Brainard*, 396 U.S. 28 (1969), and *Cowgill v. California*, 396 U.S. 371 (1970).

Petitioners' civil rights cause of action is not barred by limitations and petitioners are entitled to have the California court's judgment reversed inasmuch as all of their allegations were admitted on demurrer. The California legislature has recognized the importance of keeping the State University free and independent of political influence so as not to impair its students' First Amendment right to receive all available information and to participate in free discussion in the search for truth. For a public institution of higher learning to defend its gender centered political propaganda on the grounds of academic freedom is arrogant nonsense.

CSLB contends for freedom from public scrutiny and accountability as if it were an unregulated private college.

Along with the benefits of public funding and resources comes a responsibility to the public either to obey the law or else to challenge its constitutionality. CSLB has done neither. It justifies its arrogance by invoking the insupportable and impersuasive doctrine of academic license. Yet, a greater threat to academic freedom could not exist than to allow an entire department of a state university to be captured by special interests claiming immunity for their illegal indoctrination of students enrolled to learn truth, not propaganda.

Two emminent legal scholars have recognized the need for governments to speak, on the one hand, but also the danger of abuse and excess by such a powerful voice, on the other hand. Steven Shiffren in his article "Government Speech", 27 U.C.L.A. L. Rev. 565 (1980) favors accommodation by an eclectic approach, while Mark G. Yudof in his article "When Governments Speak: Toward a Theory of Government Expression and the First Amendment," 57 Tex. L. Rev. 863 (1979) recommends legislative regulation with the court's enjoining ultra vires speech interfering with individual judgment. Respondents do not seek to impair academic freedom but to uphold and enforce it. The feminist dialectic has its place, but not to the exclusion of all other thought. If critical analysis and robust debate are factors at all in academic freedom, there must be more than one facet of an issue open to view.

The California court's simplistic disregard of Petitioners' claim, even in the face of an express statute prohibiting the conduct charged, shows a singular lack of appreciation for the broad protections of the First and

Fourteenth Amendments and a blithe ignorance of the dangers of government propaganda in the mouth of those posing as arbiters of truth.

DATE: October 20, 1987

Respectfully submitted,

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Attorney for Petitioners

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION THREE

JO ELLEN ALLEN, et al.,	)	2d Civ. BO19244
	)	
Plaintiffs and Appellants,	)	(Super.Ct.No. SOC 76058)
	)	
v.	)	
	)	
THE BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND COLLEGES, et al.,	)	(Filed April 30, 1987)
	)	
Defendants and Respondents.	)	
	)	

APPEAL from a judgment of the Superior Court of Los Angeles County. Sheila F. Pokras, Judge. Affirmed.

Burton, Brunt & Robbins, Thomas M. Burton, for Appellants.

John K. Van de Kamp, Attorney General, Henry G. Ullerich, Richard M. Radosh, Deputy Attorneys General, for Respondents.

INTRODUCTION

Plaintiffs and appellants, Jo Ellen Allen, Oliver W. Speraw, Dorothy Hughes, Betsy Berg, Gloria Gabor, Rose Burgos, Lani Currameng, Andrea Valle, Lori Stewart, Kelley Fortner, Tomris Aran, Nancy Rankin, Karen Sewell, Carl Davis, Marie Paul, and Dorothy Durocher, appeal from a judgment dismissing their First Amended Complaint against defendants and respondents, The Board of Trustees of the California State University and Colleges, Glen Dumke, Chancellor of the California State Universities, Stephen Horn, President, Glendon Drake, Vice-President, and John Haller, Vice-President, respectively, of the California State University at Long Beach, for failure to amend their complaint pursuant to Code of Civil Procedure section 581, subdivision (c). We affirm.

PROCEDURAL FACTS

Plaintiffs, as taxpayers, filed their original complaint on January 4, 1985, alleging 12 purported causes of action [Injunctive Relief (First Cause of Action); Declaratory Relief (Second Cause of Action); Declaratory Relief (Third Cause of Action); Violation of Civil Rights (Fourth Cause of Action); Accounting (Fifth Cause of Action); Unlawful Expenditure of Public Funds (Sixth Cause of Action); Violations of Constitutional Law (Seventh Cause of Action); Violation of Constitutional Law (Eighth Cause of Action); Sex Discrimination (Ninth Cause of Action); Violation of California Constituiton (Tenth Cause of Action); Mandamus (Eleventh Cause of Action); Attorneys Fees (Twelfth Cause of Action], the main gist of which was that defendants had unlawfully spent public funds on the Women's Studies Program at

California State University of Long Beach (CSLB), in that the program offered courses which promoted and advocated feminism and lesbianism to the exclusion of other viewpoints.

Defendant demurred to the complaint on the grounds that it was uncertain, each purported cause of action failed to allege ultimate facts sufficient to constitute a cause of action, all plaintiffs lacked standing to sue, and permitting the action to proceed would allow plaintiffs to use the judicial system to impose a chilling effect on academic programs at the university. Additionally, defendants demurred to the fourth cause of action, which alleged civil rights violations under 42 U.S.C. § 1983, on the grounds that it was barred by the relevant statute of limitations and failed to state a cause of action.

Following brief oral argument, the court sustained the demurrer to all causes of action on the grounds stated in defendants' moving papers. (Plaintiffs' Reply Brief had not reached the court file at the time of the hearing.) The demurrer to the fourth cause of action, the civil rights claim, was sustained without leave to amend. The demurrers to the other causes of action were sustained with leave to amend.

Plaintiffs filed a first amended complaint. It was a verbatim duplicate of the original complaint, except that the fourth cause of action was deleted and the remainder of the causes of action were renumbered.

Defendants filed a motion to dismiss the new complaint for failure to amend (former Code Civ. Proc., § 581, subd. (c)), together with a demurrer to the first amended complaint.

Plaintiffs filed their reply argument asserting that any taxpayer had standing to litigate the propriety of university courses under California's liberal standing rules and that amending their complaint would have been futile because the court did not rule on the merits of the previous demurrer. Defendants, by supplemental memorandum of points and authorities, answered plaintiff's contentions.

After oral argument on the motions, the court took the matter under submission, and on October 22, 1985, granted defendants' motion to dismiss for failure to amend (former Code Civ. Proc., § 581, subd. (c)). The court signed and entered the order of dismissal on January 17, 1986, and plaintiffs timely appealed.

FACTUAL STATEMENT

In their Appellants' Opening Brief, plaintiffs have summarized well the allegations of their first amended complaint. Therefore, we quote from their brief verbatim:

"Plaintiffs are taxpayers who, pursuant to CCP 526a[1] and *Van Atta vs. Scott*, 27 CA.3d 424, 449 (1980) challenge the political propaganda of a state university. The

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[1] Code of Civil Procedure section 526a provides in pertinent part:

"An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein . . . ."

Women's Studies Program at the California State College at Long Beach (CSLB) and its curriculum, resources and faculty are wholly and singly developed to the feminist political movement. Not content to teach about feminism and it attendant doctrines, the program practiced at CSLB advocates, indoctrinates and promotes feminism to the exclusion of all other view points. There is no tolerance for contrary opinions. In fact, their existence is not acknowledged.

"For example, plaintiff Rose Burgos took a Women's Studies course 'How To Be An Assertive Woman' in order to help enter the world of business. Instead, she was indoctrinated into the claimed benefits of masturbation and lesbianism by films and touching exercises.

"The plaintiff Lani Currameng took a psychology course entitled 'Therapists and Experiment Effects.' Instead of dealing with therapist problems, the course and its texts were an apologia for lesbianism and an effort to denigrate the traditional family. The instructor told the students that she was going to reeducate them into being homosexual.

"The plaintiff Andrea Valle took an assertiveness program in order to learn how to approach people. The instructor showed offensive films depicting masturbation and lesbian love making and assigned sexual homework.

"The plaintiff Laurie Stewart took the Women's Studies course "Women and Their Bodies.' One half of the course was about sex, with the instructor showing films of her own genitalia or group and lesbian sex and masturbation. The instructor assigned contact with porongraphy and required the students to keep a sexually explicit

journal. The instructor said that she was a lesbian and indicated that the plaintiffs' resistance to the course material and assignments was abnormal.

"The plaintiff Kelly Fortner took an assertive women's class as part of the program. The class advocated lesbianism and was biased against men. Anyone who was opposed to lesbianism was intimidated by the instructor in front of other students.

"Further factual allegations of the first amended complaint are as follows:

" '23. Since the Summer of 1980 Sondra Hale, as director of the Women's Studies Program at California State University at Long Beach and the other faculty members teaching in said program, all of them feminists, have maintained at California State University at Long Beach a Women's Studies Program with a political and sectarian feminist bias.

" '24. Feminism is a distinct political, sociological movement in the United States whose stated ultimate goal is a transformation of society by:

" '1) Freeing sexual behavior from all restraint.

" '2) Achieving economic self-determination by exposing societal institutions, especially the biological family, as patriarchal engines of oppression.

" '3) Preserving and enhancing abortion on demand as a fundamental reproductive right;

" '4) Freeing women from heterosexual orientation which feminists claim is a male-designed concept of female dependency.

The Women's Studies Program at the University is purposefully and explicitly political so that students participating in it will emerge not only with a new and positive feminist perspective, but will also be equipped and motivated to achieve feminist political and social goals, both inside and outside the classroom.

" '25. Defendants not only have maintained the feminist bias of the Women's Studies Program, but have succeeded in infusing that bias into the curricula of other academic courses taught at California State University at Long Beach such as psychology, history and physical education.

" '26. Many citizens of California, including the plaintiffs, disagree with the tenets of feminism as advocated at California State University at Long Beach.

"They particularly oppose and are repelled by the flouting of traditional family and moral values always recognized as a basie part of the American heritage, as exemplified by defendants' advocacy of feminist doctrine and homosexual conduct and their recruiting [of] immature students to them.

" '27. In the Spring of 1978, the women's studies faculty did a self-study of the program. The self-study candidly acknowledged that the program's 'orientation toward an explicitly feminist perspective was an important goal;' that the objective was not only to indoctrinate the students in feminism, but the equip them to participate in 'creative social change' in favor of feminist doctrines.

" '

.....

" '29. In 1980, on the recommendation of the National Women's Studies Association, the feminist network

for all such programs, the University commissioned an external review of the Women's Studies Program by Nancy Porter, a professor of women's studies at Oregon State University. The 1980 study found the California State University at Long Beach program exemplary of all women's studies programs by combining the academic resources of the University with 'the feminist scholarship, pedagogy and activism of a community base.' The report recognized that every women's studies program in the country is problematic to the host university because its feminist goals and emphasis challenge patriarchal institutions.

" '30. The required and recommended texts for the University's Women's Studies Program contain approximately seventy-six books advocating feminism, women's liberation and lesbian sexuality, but not one book used for the purpose of extolling sex roles, traditional women or family life.

" '31. Of the 18 courses offered in the Women's Studies Program, no course emphasizes the traditional family so as to counter feminist advocacy by giving an alternate viewpoint.'

"Aside from the plaintiffs who took the offending courses, other taxpayers in the community complained to the defendant administrators of the University about the program, but their complaints were rebuffed. In complicity with the Women's Studies faculty, the University then conducted a study which condemned the plaintiffs for interferring with the Women's Studies Program. The faculty of the program admit that the Women's Studies Program is taught from a feminist perspective but the University has defended the program's orientation as be-

yond public scrutiny and has denied the public's prerogative to question the University's judgment with respect to the feminist orientation of the program."

CONTENTIONS

I. "The Plaintiffs Rose Burgos, Lanie Currameng and Kelly Fortner Have Standing to Sue Under the Federal Civil Rights Act."

II. "Plaintiffs have Standing As Taxpayers and Citizens to Challenge as Illegal the Funding and Content of the Women's Studies Program at a State University."

III. "The State's Funding and Advancement of the Political Doctrines of Feminism and Lesbianism at a State University Advances Secularism, Inhibits Theistic Religions and Entangles the State in Religious Issues, all in Violation of the First Amendment Establishment and Free exercises Clauses of the Federal Constitution and the Express Prohibitions of the California Constitution."

IV. "The Challenged Conduct Unlawfully Compels Taxpayers to Support an Idealogy They Oppose."

V. "The Classrooms at CSLB Constitute a Public Forum, from which the State has Systematically and Unlawfully Excluded the Traditional Moral and Ethical Viewpoints of the Plaintiffs."

VI. "The Women's Studies Program is Gender Preferential."

DISCUSSION

I.

Standard of Review

The scope of our review is limited to a determination of whether the demurrer was sustained erroneously without leave to amend and whether such determination was an abuse of discretion. (*Shurpin v. Elmhirst* (1983) 148 Cal.App.3d 94, 98.) "In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Pollack v. Lytle* (1981) 120 Cal.App.3d 931, 939-940.) "It is axiomatic that a general demurrer may consider not only the facts appearing upon the face of the complaint but also any matter of which the court is required to, or may, take judicial notice." (*Dryden v. Tri-Valley Growers* (1977) 65 Cal.App.3d 990, 997; Code Civ. Proc., § 430.30.)

"It is the rule that when a plaintiff is given the opportunity to amend the complaint and elects not to do so, strict construction of the complaint is required and it must be presumed that the plaintiff has stated as strong a case as he can." (*Gonzales v. State of California* (1977) 68 Cal. App.3d 621, 635; see *Shapiro v. Wells Fargo Realty Advisors* (1984) 152 Cal.App.3d 467, 474.) Further, when the plaintiff declines to amend, electing instead to stand on his complaint, the judgment of dismissal must be affirmed if the unamended complaint is objectionable on any ground raised by the demurrer. (*Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 457; *Gonzales v. State of California, supra,* 68 Cal.App.3d at p. 635.)

II.

Plaintiffs Have Failed to State a Cognizable Cause of Action in Their Original and First Amended Complaints.

a. *The Fourth Cause of Action In the Original Complaint for Civil Rights Violations.*

The fourth cause of action of the original complaint, filed on January 4, 1985, was brought by plaintiffs, Lori Stewart, Rose Burgos, Lani Currameng, and Andrea Valle, apparently in their individual capacities. Those plaintiffs were identified in the complaint as students at CSLB between 1979 and 1981, who each took one course in the Women's Studies Department in 1980 or 1981. Alleging their civil rights were violated, they brought this cause of action under 42 U.S.C. § 1983.

In *Wilson v. Garcia* (1985) 471 U.S. 261 [85 L.Ed.2d 254, 105 S.Ct. 1938], the United States Supreme Court held that an action under 42 U.S.C. § 1983 should be considered a personal injury action for purposes of borrowing an appropriate state statute of limitations. In this state the governing limitations period is one year. (Code Civ. Proc., § 340.) The fact that some of the plaintiffs who brought the instant action unsuccessfully attempted in 1984 to intervene in the related case of *Hale v. The Board of Trustees at The California State University and Colleges* (L.A.S.C. Case No. 420514, now pending before the Los Angeles Superior Court),[2] did not extend this time

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[2] As requested by the parties, we have taken judicial notice of the *Hale* case pursuant to Evidence Code sections 459 and 452, subdivision (d).

bar. The trial court, therefore, properly sustained defendants' demurrer to the original fourth cause of action without leave to amend.

b. *The Causes of Action Alleged in the First Amended Complaint.*

1. *Standing*

Plaintiffs brought the action on the 11 remaining causes of action in their capacity as taxpayers. Defendants argue that plaintiffs have no standing to bring this lawsuit under either federal or state law. We disagree.

"[Code of Civil Procedure] [s]ection 526a[3] authorizes a taxpayer to file '[a]n action to . . . prevent[ ] any illegal expenditure of . . . funds of a . . . city and county of the state. . . .' 'The primary puprpose of this statute, originally enacted in 1909, is to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement." ' [Citation.] That section provides 'a general citizen remedy for controlling illegal governmental activity.' [Citations.]" (*Van Atta v. Scott* (1980) 27 Cal.3d 424, 447.) A taxpayer's action may also be brought against a *state* agency or officer. (See *Farley v. Cory* (1978) 78 Cal.App.3d 583, 589; *Ahlgren v. Carr* (1962) 209 Cal.App.2d 248, 254-255.) There is no requirement that the parties have a personal interest in the litigation. (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 269.) Further, a section 526a action may seek an injunction, declaratory relief, damages and mandamus. (*Van Atta v. Scott, supra,* 27 Cal.3d at pp. 449-450.)

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[3] See footnote 1.

2. *Education Code section 66607*

Although plaintiffs cited throughout their first amended complaint (in shot-gun fashion) many statutes which they allege defendants violated,[4] they place great reliance in their Appellants' Opening Brief on Education Code section 66607, which provides in relevant part:

"The California State University shall be entirely independent of all political and sectarian influence and kept free therefrom in the appointment of its trustees and in the administration of its affairs . . . ."

The theme of plaintiffs' complaint is that defendants are illegally spending CSLB funds to advance feminism and lesbianism. According to plaintiffs, CSLB has a duty to keep the university independent of all political and sectarian influence even insofar as course content. They assert in their Appellant's Opening Brief: "Both the Feminists Women's Health Center case [*Feminist Women's Health Center, Inc., et al. v. Robert Philibosian, etc. et al.* (1984) 157 Cal.App.3d 1076, cert. den. (1985) 470 U.S. 1052 [84 L.Ed.2d 816, 105 S.Ct. 1752]] and Education Code

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[4] Plaintiffs failed to state a cause of action under the following statutes which they cited in their first amended complaint: Ed. Code, § 89005.5 [states way in which the name "California State University" shall not be used without permission of the Trustees of the University]; Ed. Code, § 89535 [states reasons for dismissal, demotion or suspension of permanent or probationary employee]; Ed. Code, § 89757 [prohibits university funds from being used for membership in private organization].

(See also footnote 6, on page 24, which lists the statutes upon which plaintiffs relied in their first amended complaint for their cause of action alleging sex discrimination or gender preference and footnote 5, on page 20, which lists the provisions of the California Constitution upon which plaintiffs relied in alleging infringements of constitutional rights.)

[s]ection 66607 require CSLB to maintain a studied neutrality as to not only the abortion issue but as to all other feminist political issues about which there is so much current debate, such as the Equal Rights Amendment, comparable worth, sexual stereotyping, working mothers, latchkey children, the public funding of abortions, the public funding of daycare centers, etc."

In order to pass constitutional muster, however, section 66607 cannot be interpreted to mean that there must be no political or sectarian influence on the students from within the university. " ' . . . It is the business of a university to provide that atmosphere which is most conductive to speculation, experiment and creation. It is an atmosphere in which there prevail "the four essential freedoms of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.' [Citation.]" (*Sweezy v. New Hampshire* (1957) 354 U.S. 234, 263 [1 L.Ed.2d 1311, 1332, 77 S.Ct. 1203], quoted in *Widmar v. Vincent* (1981) 454 U.S. 263, 276 [70 L.Ed.2d 440, 452, 102 S.Ct. 2691].)

With respect to persons entitled to be at the university, the cases leave no doubt "that the First Amendment rights of speech and association extend to the campuses of state universities." (*Widmar v. Vincent, supra,* at pp. 268-269.) In *Board of Education v. Pico* (1982) 457 U.S. 853, 866 [73 L.Ed.2d 435, 446, 102 S.Ct. 2799], the United States Supreme Court, explained with regard to student's rights:

"And we have recognized that 'the State may not, consistently with the spirit of the First Amendment, contract

the spectrum of available knowledge.' [Citation.] In keeping with this principle, we have held that in a variety of contexts 'the Constitution protects the right to receive information and ideas.' [Citations.] This right is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution, in two senses. First, the right to receive ideas follows ineluctably from the *sender's* First Amendment right to send them: 'The right of freedom of speech and press . . . embraces the right to distribute literature, and necessarily protects the right to receive it.' [Citation.] 'The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.' [Citation.]"

Inasmuch as we must construe section 66607 to preserve its constitutionality, if reasonably possible (*Franklin v. Leland Stanford Junior University* (1985) 172 Cal.App. 3d 322, 348), we will not construe that section to mandate neutrality in the course content of its Women's Studies Program.

While it is true that CSLB cannot use its funds to advocate a political or sectarian cause to persons or organizations outside the university, as was the case in *Stanson v. Mott* (1976) 17 Cal.3d 206 [Director of the State Department of Parks and Recreation spent public funds to promote voter approval of park bond issue] and in *Miller v. Miller* (1978) 87 Cal.App.3d 762 [California Commission on the Status of Women spent public funds to promote ratification of Equal Rights Amendment], there are no allegations in plaintiffs' first amended complaint that CSLB has done so. If plaintiffs are implying that section

66607 was violated by the university's communications with the National Women's Studies Association, which led to the commission of the Oregon State University professor to review the CSLB Women's Studies Program, we disagree. Such critiques cannot be stifled on the pretext they are a political or sectarian influence. Furthermore, plaintiffs have made no allegations of influence by virtue of the study. In fact, they allege the "study found the [CSLB] program exemplary of all women's studies programs. . . ." Apparently, the only impact of the review was that the program remained thereafter unchanged.

3. *Constitutional Claims*

To the extent plaintiffs allege in their first amended complaint that CSLB's expenditure of public funds for the Women's Studies Program violates the federal and California Constitutions[5] in that it establishes a "religion of secularism" inhibits religious expression, entails an improper entanglement with religion, intrudes on freedom of

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[5] Plaintiffs have failed to state a cause of action under the First and Fourteenth Amendments the United States Constitution and the following provisions of the California Constitution, cited in their first amended complaint: Art. I, § 1 [inalienable rights, including right of privacy]; Art. I, § 2 [freedom of speech]; Art. 1, §4 [Freedom of religion]; Art. I, § 7 [right to due process and equal protection]; Art. 9, §1 [the Legislature is required to encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement]; Art. 9, § 8 [prohibits public money from being appropriated for the support of any religious or private school and prohibits religious doctrine from being taught in public schools]; Art. 16, § 5 [prohibits government appropriation of public funds or financial aid for religious or sectarian purposes or institutions].

speech and rights of privacy, we take judicial notice (Ev. Code, §§ 459, 452, subd. (h)), of the fact that the Women's Studies Program is only *one* of many programs within the university and that it offers only 18 of the several hundred courses taught there. (Compare *Fox v. City of Los Angeles* (1978) 22 Cal.3d 792.)

There are no allegations by plaintiffs that the students are required to take courses in the Women's Studies Program nor that they are required to remain in those courses if they find them to be psychologically intimidating or in any other way distasteful. Plaintiffs do not allege that no courses in religious studies are offered in other of the CSLB departments. As in most universities, we assume courses are taught at CSLB which extol the virtues of Christianity, Judiaism, Buddhism and the other great religions of the world. The mere fact that one program in the entire university advocates a particular point of view which plaintiffs find offensive and "anti-religious" shows no improper entanglement in religion on the part of the university; nor does it show a violation of the establishment or free exercise clauses of the federal or state constitutions. Judge Canby's reflections in his concurring opinion in *Grove v. Mead School Dist. No. 345* (9th Cir. 1985) 753 F.2d 1528, 1542, cert. den. — U.S. — [88 L.Ed.2d 70, 106 S.Ct. 85], are instructive:

"The inevitability of this conflict between plaintiffs' religious rejection of 'secularism' and the secularization of society suggests why antipathy alone, however sincere,

is never enough to sustain a free exercise challange. Plaintiffs are religiously offended by a particular novel; others previously before us have been religiously offended by Trident submarines or the nuclear arms race. Were the free exercise clause violated whenever governmental activity is offensive to or at variance with sincerely held religious precepts, virtually no governmental program would be constitutionally possible.

"When the contention is applied to education, Justice Jackson's admonition is especially appropriate:

" 'Authorities list 256 separate and substantial religious bodies to exist in the . . . United States. . . . . If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the public school system can result. . . . ' *McCollum v. Bd. of Educ.* (333 U.S. 203, 235, 68 S.Ct. 461, 477, 92 L.Ed. 649 (1948), (Jackson, J., concurring). The lesson is clear: governmental actions that merely offend or cast doubt on religious beliefs do not on that account violate free exercise. An actual burden on the profession or exercise of religion is required. See *Wilson*, 708 F.2d at 741.

"In short, distinctions must be drawn between those governmental actions that actually interfere with the exercise of religion, and those that merely require or result in

exposure to attitudes and outlooks at odds with perspectives prompted by religion." (Footnotes omitted.)

4. *Public Forum*

The value and function of a university is to expose young minds to new and different ideas. However, contrary to plaintiffs' allegations, the Women's Studies Program is not a "public forum." The cases have established that, unlike streets or parks or even municipal theaters, the campus of a public university is not a public forum. (*Widmar v. Vincent, supra,* 454 U.S. 263, 267-268, fn. 5; see *Piarowski v. Illinois Community College* (7th Cir. 1985) 759 F.2d 625, 629, cert. den. — U.S. — [88 L.Ed. 2d 460, 106 S.Ct. 528].)

5. *Taxpayers Forced to Support Ideology They Oppose*

Plaintiffs' allegations that the Women's Studies Program is not open to competing viewpoints and, therefore, the taxpayers are forced to support an ideology they oppose, states no cause of action. The university as a whole, not just one program, must be considered in an assessment of whether competing views are offered therein. When so considered plaintiffs can point to no bias. For instance, by the very nature of their subject matter, women are portrayed in traditional roles in many, if not most, university literature, history, psychology and sociology courses, to name but a few.

Thus, the cases cited by plaintiff (*Stanson v. Mott, supra,* 17 Cal.3d 206; *Miller v. Miller, supra,* 87 Cal.App.3d

762) in which taxpayers successfully challenged government expenditure of funds to support *only one* of competing viewoints are inappposite. Moreover, *Abood v. Detroit Board of Education* (1977) 431 U.S. 209 [52 L.Ed.2d 261, 97 S.Ct. 1782], in which the United States Supreme Court held that dissenting union members could not be compelled to finance union political expenditures on behalf of candidates they oppose, is likewise inapposite to the facts of this case.

6. *Gender Preference*

Plaintiffs' allegations of sex discrimination or "gender preference" on the basis that the Women's Studies Program has an exclusively female faculty whose teaching is oriented to only the needs of women likewise fails to state a cause of action.[6]

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[6] Plaintiffs have failed to state a cause of action for gender preference or sex discrimination under any of the statutes they have cited in their first amended complaint (Ed. Code, §§ 220, 229, 230 [prohibits discrimination on the basis of sex]; Ed. Code, § 1624 [requires board of supervisors to fix a rate for county tax sufficient to produce funds in statement filed by county board of education]; Ed. Code § 60044 [states prohibited instructional materials contain matter reflecting adversely upon persons because of their race, color, creed, national origin, ancestry, sex or occupation and/or sectarian or denominational doctrine or propaganda contrary to law]; Govt. Code § 11131 [prohibits a state agency from using a facility for a meeting or conference which prohibits admission of any person on the basis of race, religious creed, color, natural origin, ancestry or sex]; Govt. Code, § 11135 [provides no person shall be unlawfully denied benefits or unlawfully subject to discrimination under a state program or activity, based on ethnic identification, religion, age, sex, color, etc.]; 20 U.S.C. § 1681 [prohibits discrimination on the basis of sex]).

Plaintiffs do not allege that males have applied to teach this subject and have been rejected or that males have been denied admission to courses in the program. Without such allegations there can be no cause of action for sex discrimination. Thus, the Women's Studies Program, the only program within the entire university which is geared solely to addressing women's "needs," is not the kind of "gender preference" which requires scrutiny under the Equal Protection Clause of the Fourteenth Amendment. (Compare *Mississippi University for Women v. Hogan* (1982) 458 U.S. 718, 723 [73 L.Ed.2d 1090, 1098, 102 S.Ct. 3331].) Therefore, defendants need not show, as plaintiffs contend, that the Women's Studies Program "serves 'important governmental objectives and that the discriminatory means employed' are substantially related to the achievment of those objectives.' [Citation.]" (*Ibid.*)

CONCLUSION

A university cannot be accountable to taxpayers for the content of its courses, as plaintiffs assert. If taxpayers were allowed to monitor and censor course content at universities, it is unlikely that many existing courses could be taught. Indeed, if we were to grant the relief sought by plaintiffs our action would itself threaten First Amendment values. (See *Grove v. Mead School Dist. No. 354, supra*, 753 F.2d at p. 1543.) " 'Our Constitution does not permit the official suppression of ideas.' [Citation.] We are bound to respect that command as well." (*Ibid.*)

The principles by which we are governed was stated well by the United States Supreme Court in *Sweezy v. New Hampshire, supra*, 354 U.S. 234, 250:

"The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

ARABIAN, J.

We concur:

KLEIN, P. J.
DANIELSON, J.

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 3, No. B019244

SO01186

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

ALLEN et al.

v.

BOARD OF TRUSTEES OF THE CALIFORNIA
STATE UNIVERSITIES AND COLLEGES et al.

(Filed July 22, 1987)

Appellants' petition for review DENIED.

The request for an order directing publication of the opinion is denied.

PANEL
Acting Chief Justice